LEAGUE OF WOMEN VOTERS®
OF LOS ALTOS-MOUNTAIN VIEW AREA

September 18, 2022

Re: Item 4.1 – Mixed-Use Development at 334 San Antonio Road

Dear Chair Cranston and Members of the Environmental Planning Commission:

The LWV supports expanding middle-income housing while not diminishing attention to low-income housing needs. The LWV also believes that housing should be built with amenities that will encourage economic integration within apartment buildings as well as within neighborhoods.

As such, while we are in support of this project as it would be more productive than the existing gas station, we have some concerns with the city and applicant regarding the density bonus concessions.

We are concerned about the BMR units not being equitably distributed and not proportional to the overall bedroom mixes. This is counter to integration among different income groups. We understand the density bonus focuses on units rather than bedrooms and that the applicant has provided the evidence regarding effects on economic feasibility. In the future, we would like the City and applicants to come up with more appealing alternative concessions, such as "greater height," going farther than just "physically precluding."

With regards to the concession on weighted AMI, we believe that the city's ordinance is too strict, especially given that the rental equivalent is the more flexible "less than or equal to."

(Please send any questions about this email to Kevin Ma at housing@lwvlamv.org)

Thank you for considering our input.

Karin Bricker, President of the LWV of Los Altos-Mountain View

cc: Rebecca Shapiro Stephanie Williams

From: Mircea
Sent: Tuesday, September 20, 2022 2:21 PM
To: Shapiro, Rebecca <Rebecca.Shapiro@mountainview.gov>
Cc: Naresh Krishnamoorti
Subject: 334 SA BMR - AMI

Rebecca,

I apologize for the late notice, but following up on the letter written by the League of Women Voters, we just found this very recent HCD public document that discusses the BMR units and provides state guidance on AMI requirements. It basically agrees with the point raised by the LWV letter that Mountain View's weighted AMI requirement is too strict.

The League of Women Voters is strongly of the opinion that our building should have 10 BMR units that are more equitably dispersed throughout the building, with half of them being 2 BR units for families and half of them being 1 BR units.

Our main objective is to have our project voted on and approved tomorrow. However, if the LWV raises the issue at the EPC meeting of a more equitable distribution of BMR units in exchange for providing only 10 BMR units, and the EPC seems ready to vote on and approve the project with that change, we will not object to the proposal.

In light of this possibility, we would like the planning commission and city attorney to review the attached letter and the following proposal: instead of providing 13 BMRs (10 Low and 3 Moderate), we provide 10 Low BMRs and we forgo the three concessions. The City and Applicant can then look at the mix and locations of the 10 Low BMR units. For the project to pencil out, and for us not to object to the LWV's proposal, the unit mix of those 10 BMR units must be five 2/2s and five 1/1s. We cannot provide more than 10 BMR units, nor can we provide more than five 2/2s. If we're asked to provide more than five 2/2s, in order to be proportionate to the number of 2/2s in the building (which is 76%), we'll revert back to our original 13 BMRs with the three concessions.

EPC might consider two options and decide to recommend to CC either:
1. Option 1: 13BMR's (10 1/1's Low, 3 Moderate (1 1/1 and 2 2/2's))
2. Option 2: 10BMR's (5 1/1's Low and 5 2/2's Low)
No other options/combinations would financially work.

Please include the attached letter in public comments for the project and have the city attorney review it. Please call me with any questions.

Thank you,

Mircea

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September 2, 2022

John Keho
Planning and Development Services Director
City of West Hollywood
8300 Santa Monica Boulevard
West Hollywood, CA 90069

Dear John Keho:

RE: 8500 Santa Monica Boulevard – Letter of Technical Assistance

The purpose of this letter is to provide technical assistance to the City of West Hollywood (City) regarding the mixed-used infill project to be located at 8500 Santa Monica Boulevard. The proposed project would result in the construction of a six-story, 30-unit mixed-use building containing ground floor commercial space and upper story market-rate and affordable housing units. The project would provide three units that would be affordable to very low-income (VLI) households, two units that would be affordable to moderate income (MI) households, and 25 market rate units. The proposed project utilizes the State Density Bonus Law (SDBL) (Gov. Code, § 65915) to achieve a density bonus and is subject to the City's inclusionary zoning requirements.

The California Department of Housing and Community Development (HCD) received a complaint regarding the subject project, and the City requested technical assistance from HCD regarding the relationship of the SDBL and the City's inclusionary zoning ordinance (Ordinance) (WHMC, § 19.22.030). Specifically, the City seeks guidance on whether the requirement that a project include one MI unit for every VLI or LI unit conflicts with state housing law (especially the SDBL). Additionally, the City seeks guidance on how to best calculate base density in a zone without an associated dwelling units per acre density standard and how to consider concession requests that would increase a project's FAR. Coincidentally, these latter topics are addressed in the August 31, 2022 Letter of Technical Assistance to the City of Santa Monica. That letter will be provided to the City instead of replicating the information in this letter.

The City's Ordinance applies a 20% inclusionary requirement on all developments containing more than ten housing units. Applied to the subject project, this means that 5 units[1] of the 22 base density units must be affordable. However, the Ordinance requires that for every VLI or LI unit provided, the applicant must also provide a MI unit. (WHMC, § 19.22.030(F)). The applicant argues that this requirement reduces the economic

[1] Rounded up to 5 units from 4.4 units

feasibility of SBDL-enabled projects because, in practice, it requires that a project include more affordable units to qualify for a density bonus than are required by the SDBL. The applicant indicates that it would have preferred to construct 4 VLI units and 1 MI unit (to earn an additional SDBL concession) but were disincentivized from doing so because it would necessitate adding another MI unit. It should be noted that the SDBL offers much greater incentives for projects that include VLI/LI units than MI units, thereby incentivizing the former. For instance, to achieve the maximum 50% density bonus, a project needs to provide only 15% VLI units compared to 44% MI units (Gov. Code, § 65915, subd. (f)). Conversations with City staff indicate that the mandated MI unit requirement is in place to support the City in its effort to produce enough housing for moderate-income households. Absent this requirement (the City contends), SDBL-enabled projects would largely consist only of VLI/LI units and market rate units. This letter explores the ways that inclusionary zoning ordinances and SDBL implementation ordinances can and should be harmonized to best achieve the important functions of each.

Inclusionary Zoning

Inclusionary zoning is a vitally important affordable housing production tool used across California. Properly implemented, it can and has resulted in the production of significant amounts of deed-restricted affordable housing – often without the need of government subsidy. Unsurprisingly, many local agencies have adopted or are considering adopting inclusionary zoning ordinances. HCD strongly supports these efforts. However, some inclusionary requirements can hinder, rather than facilitate, the production of affordable housing. This is because inclusionary requirements can sometimes negatively affect the economic feasibility of residential development projects. A project that is not economically feasible will not be constructed and will provide no affordable units at all. The state inclusionary zoning statute addresses these limitations, providing that a local agency must provide alternative means of compliance (e.g., in lieu fees) and that rental inclusionary requirements in excess of 15% may be subject to review by HCD to consider economic feasibility (Gov. Code, §§ 65850, subd. (g); 65850.1). For more information, please see HCD's Rental Inclusionary Housing Memo.

State Density Bonus Law

First adopted in 1979 and strengthened over the years, the SDBL is one of the most powerful tools in the production of affordable housing. The SDBL facilitates both the construction of 100% affordable projects as well as projects that provide primarily market rate units. It allows the latter to build more market rate units than would typically be allowed in exchange for including affordable units. Like with inclusionary zoning requirements, the affordable units are often provided without the use of government subsidy. Within the context of market rate development, the SDBL is explicit regarding the importance of maintaining the economic viability of projects. It provides that, "The Legislature finds and declares that the intent behind the Density Bonus Law is to allow

public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance in exchange for affordable units. It further reaffirms that the intent is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy." (Gov. Code, § 65915, subd. (t).) The SDBL provides direction regarding the relationship between itself and inclusionary zoning requirements. It confirms that an affordable unit provided to satisfy an inclusionary requirement also earns the applicant the benefits and protections of the SDBL (e.g., a density bonus, concessions, development standard waivers, etc.) (Gov. Code, § 65915, subd. (o)(6).) It also provides that an affordable unit in a SDBL-enabled project is not subject to affordable housing impact fees, including inclusionary zoning fees and in-lieu fees. (Gov. Code, § 65915.1).

Relationship to SDBL

Beyond the language provided by the SDBL, a few court cases address situations in which local ordinances or interpretations have affected the mechanics of the SDBL. Chief among them is *Latinos Unidos Del Valle De Napa Y Solano v. County of Napa*[2] which settled the matter of whether an affordable unit can serve both as an "inclusionary unit" meeting a local inclusionary zoning requirement and as a "target unit" qualifying a project for a density bonus. It can, and the statute was subsequently amended to reflect this. If this were not the case, for instance, a project attempting a earn a 50% density bonus by providing 15% VLI units would need to provide 15% affordable units to meet the 15% inclusionary requirement and an additional 15% affordable units to earn the density bonus. This would require the project to provide 30% affordable units – twice the amount contemplated by either the SDBL or the local inclusionary ordinance. A more recent case, *Schreiber v. City of Los Angeles* reinforces the finding made in *Latinos*, "A local ordinance is preempted if it conflicts with the density bonus law by increasing the requirements to obtain its benefits."[3] These cases provide a helpful lens through which to evaluate the practical effects of local ordinances upon the operation of the SDBL. Local agencies should maintain an awareness of potential unintended impacts of local inclusionary requirements on SDBL applications.

The City should be prepared to grant a request for a SDBL concession to modify provisions of the inclusionary ordinance, especially ordinances that mandate the level of affordability of inclusionary units or their ratios. The SDBL can be used to modify or waive provisions of an inclusionary ordinance. For example, a mixed-income project that relies on tax credits may need to waive a requirement that affordable units be dispersed among the market rate units. This is because tax credits and other affordable housing funding programs sometimes require the affordable units to be consolidated within a single building or on a separate parcel.

[2] (2013) 217 Cal.App.4th 1160, 1165-66 [159 Cal.Rptr.3d 284, 287-88].
[3] (2021) 69 Cal.App.5th 549, 558 [284 Cal.Rptr.3d 587, 594].

Governmental Constraints in Housing Element Law

Housing elements are required to contain analysis of potential and actual governmental constraints on the development of housing for all income levels. (Gov. Code, § 65583, subd. (a)(5).) This includes, but is not limited to, analysis of land use controls, building codes and their enforcement, and locally adopted ordinances that directly impact the cost and supply of residential development. After identifying governmental constraints, the City must implement programs to remove those governmental constraints to the development of housing where legally possible. (Gov. Code, § 65583, subd. (c)(3).) This analysis extends to a local agency's inclusionary ordinance. As described above, under Government Code section 65850.1, an inclusionary requirement of 15% or less is not subject to scrutiny by HCD. Above this percentage, however, the local agency should carefully consider local development conditions to ensure that a higher percentage would not constitute a governmental constraint by rendering projects economically infeasible. HCD has observed that typically inclusionary requirements are in the 15-20% range. This is not to say that a higher or lower level is categorically unreasonable, but that this range has been proven functional in many areas (especially in high-cost, high-development-pressure areas).

With a base density of only 22 units, the subject project does not present the most helpful scenario to examine how the City's Ordinance relates to the SDBL. Instead, consider a hypothetical scenario in West Hollywood where the base density of a site allows 100 units and the developer seeks a 35% density bonus (35 units) by providing 20% LI units. The project would be required by the Ordinance to set aside 20 units (20% of 100 units) as affordable housing. To earn the density bonus, 20 units (20% of 100 units) would have to be LI units per the SDBL. On its surface, this project would appear to handily meet the City's inclusionary requirements and the eligibly threshold of the SDBL. However, the mandated MI units requirement necessitates an additional 19 MI units.[4] This results in a substantially higher percentage of affordable units than required by the SDBL, as summarized in the table below.

[4] Per the WHMC, § 19.22.030 F. "…When two or more affordable units are constructed, the units shall be allocated alternately with the first unit allocated for a low or very low income household and the second allocated for a moderate income household, alternative between low or very low, and moderate income until all units are assigned a level of affordability."

	Overall Units	LI Units	MI Units	Market Rate Units	Affordable % of Overall Project
Without Mandated MI Units	135	20	0	115	14.8%
With Mandated MI Units	135	20	19	96	28.9%

It is the overall percentage of affordable units in a project that is of primary concern when evaluating economic feasibility. By requiring that 28.8% of the overall development be made up of affordable units, the City is in practice imposing an inclusionary requirement nearly 50% higher than its generally applicable 20% and significantly higher than the requirements of the SDBL. This may reduce the economic feasibility of the project because while affordable units are similarly expensive to build as market-rate units, the affordable units do not generate equivalent income. SDBL enables developers to build affordable housing without government subsidy – by allowing the allowing the market rate units to offset the costs of the affordable units. The City's mandated moderate-income unit requirement makes this more difficult and may constitute a governmental constraint in its current form.

It should be noted that the City's practice of allowing an applicant to combine multiple density bonuses may lessen the real-world impact of the mandated moderate unit requirement. However, this practice is problematic for several reasons. First, it is not codified, so applicants have no way of knowing about it when planning a project. Second, it can only be used to achieve up to the SDBL-defined maximum of a 50% density bonus, which may limit its compensatory value in certain circumstances. Third, no bonus is given until the 10% minimum threshold is met for certain income categories, which limits its use on smaller projects (like the subject project).

Recommendations

HCD makes the following recommendations to help the City implement both the City's local inclusionary ordinance and the SDBL. This guidance is tailored to West Hollywood but is also intended to be helpful to other jurisdictions.

- **Substitutions.** Allow more deeply affordable units to be substituted for less deeply affordable units. For example, an applicant should be able to substitute a VLI for a MI unit if they so desire. This approach is consistent with the SDBL's approach to incentivizing more deeply affordable units. It also alleviates concerns that the local agency is disincentivizing more deeply affordable units in favor of less deeply affordable units – and risking fair housing and discrimination complaints.

- **Upper Limit to Inclusionary Requirement.** Inclusionary requirements that mandate that the units be provided at certain affordability levels or in certain ratios of affordability levels should only apply up to the point that the project meets the total inclusionary percentage required. Once the overall affordability threshold is met, no additional inclusionary units should be required regardless of any affordability level ratios. Consider the example of a jurisdiction where the generally applicable inclusionary requirement is 20% and there is a one-to-one ratio requirement of MI to VLI/LI units. If the applicant proposes less than 20% affordable units to achieve a density bonus (e.g., 15% VLI to achieve the maximum density bonus) the jurisdiction would require that 5% additional affordable units be added to the project to reach the 20% inclusionary threshold despite the fact that its ratio would require 15% MI units.
- **Integrate Language.** The provisions of the City's inclusionary ordinance and its SDBL implementation ordinance should be integrated with the expectation that projects will be subject to both. The benefits and protections of the SDBL apply to all projects that meet the statutory minimum percentage of affordable units. This is to say that in jurisdictions with inclusionary zoning requirements the effects of the SDBL should be anticipated. When drafting the ordinance, a local agency should consider a diverse range of project types to explore how requirements affect each. As a starting point, the local agency should consider large vs. small projects and projects that rely on the seven eligibility categories of the SDBL (Gov. Code, § 65915, subd. (b)(1)(A-G).) Finally, the analysis should consider the final overall percentage of affordable units in each scenario to most accurately evaluate economic feasibility.

Conclusion

HCD applauds West Hollywood's commitment to affordable and recognizes the challenges of harmonizing State housing law and local ordinances. HCD appreciates the City's pragmatic and progressive approach to housing policy. This letter is intended to provide helpful context and guidance and help local agencies throughout the state work to achieve their housing goals. If you have questions or need additional information, please contact Brian Heaton at Brian.Heaton@hcd.ca.gov.

Sincerely,

Shannan West
Housing Accountability Unit Chief